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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 340

OLD COMPANY'S LEHIGH, INC., PETITIONER,

vs.

HENRY E. MEEKER, AS RECEIVER FOR THE FIRST NATIONAL BANK IN MAMARONECK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 1, 1934.

CERTIORARI GRANTED OCTOBER 8, 1934.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., Nov. 13, 1934.

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IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

OLD COMPANY'S LEHIGH, INC., Plaintiff,

against

HENRY E. MEEKER, as Receiver for The First National Bank in Mamaroneck; The First National Bank in Mamaroneck and R. G. Brewer, Inc., Defendants

BILL OF COMPLAIT

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The above named plaintiff, for its bill of complaint herein, alleges:

For a First Cause of Action

First: That the plaintiff is a corporation, duly organized and existing under and by virtue of the laws of the State of New Jersey, with its principal place of business in the City of Philadelphia, State of Pennsylvania, where it is duly licensed to do business.

Second: That upon information and belief, the defendant, R. G. Brewer, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of [fol. 2] New York, with its principal place of business in the City of Mamaroneck, in the State of New York, in the Southern District of New York.

Third: That the defendant, The First National Bank in Mamaroneck is a National Bank organized and operating under the National Banking Laws, which said bank suspended business on the 16th day of January, 1933, on account of insolvency, and in due course, a Receiver was appointed by the Comptroller of the Currency, qualified, and took charge of the assets of the said bank, said Receiver being the defendant, Henry E. Meeker, who now is in charge of the assets of said bank.

Fourth: That the grounds upon which this Court's jurisdiction depends, are that this is a suit arising under the

laws of the United States, in which the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars, and this suit is also a case for winding up the affairs of a National Banking Institution, and upon the further ground that the plaintiff is a citizen of the State of New Jersey, and the defendant, R. G. Brewer, Inc., is a citizen of the State of New York, and the controversy between the said plaintiff and the above mentioned defendant, R. G. Brewer, Inc., exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars.

Fifth: That on the 12th day of January, 1933, the plaintiff deposited for collection with the Central Penn National Bank of Philadelphia, a note, made by the defend- [fol. 3] ant, R. G. Brewer, Inc.,to the order of the plaintiff, in the sum of Three Thousand ($3,000.00) Dollars, which note became due and payable on the 16th day of January, 1933, at the offices of the defendant, The First National Bank in Mamaroneck.

Sixth: That upon information and belief, the said Central Penn National Bank of Philadelphia forwarded the above mentioned note for collection through the Chase National Bank of New York and the Federal Reserve Bank of New York, to the defendant, The First National Bank in Mamaroneck.

Seventh: That upon information and belief, on the 14th day of January, 1933, the defendant, R. G. Brewer, Inc., tendered its check, in the sum of Three Thousand Fifteen ($3,015.00) Dollars, to the defendant, The First National Bank in Mamaroneck, and the said The First National Bank in Mamaroneck accepted this check and delivered to the defendant, R. G. Brewer, Inc., the above mentioned note, made by the defendant, R. G. Brewer, Inc., to the order of the plaintiff.

Eighth: That the said check, tendered by the defendant, R. G. Brewer, Inc., was drawn upon the funds the said R. G. Brewer, Inc., had on deposit with the defendant, The First National Bank in Mamaroneck.

Ninth: That on the 16th day of January, 1933, the defendant, The First National Bank in Mamaroneck, did not resume business because of insolvency, and in due course,

[fol. 4] the defendant, Henry E. Meeker, was appointed Receiver for said bank by the Comptroller of the Currency.

Tenth: That subsequently thereto, and namely, on the 9th day of June, 1933, the plaintiff filed with the defendant, Henry E. Meeker, a claim in the sum of Three Thousand Fifteen ($3,015.00) Dollars, alleging that such claim is a preferred one and that a trust existed in favor of the plaintiff as against the defendant, The First National Bank in Mamaroneck, and the said defendant, Henry E. Meeker, rejected the said claim.

Eleventh: That the plaintiff does not have an adequate remedy at law.

For a Second Cause of Action

Twelfth: That the plaintiff repeats, reiterates and realleges each and every allegation of its complaint herein contained, marked paragraphs, "First", "Second", "Third", "Fourth", "Fifth" and "Sixth", with the same force and effect as if the same were herein set forth at length.

Thirteenth: Upon information and belief that on the 14th day of January, 1933 the defendant, The First National Bank in Mamaroneck, was wholly insolvent, and the said defendant and the defendant, R. G. Brewer, Inc., well knew of the said insolvency.

Fourteenth: Upon information and belief that the defendant, The First National Bank in Mamaroneck, and the [fol. 5] defendant, R. G. Brewer, Inc., conspired together and formed the deliberate design and purpose of defrauding the plaintiff and of discharging the liability of the defendant, R. G. Brewer, Inc., to pay the note, made by the said defendant, R. G. Brewer, Inc., to the order of the plaintiff, in the sum of Three Thousand ($3,000.00) Dollars, which note became due on the 16th of January, 1933.

Fifteenth: Upon information and belief, that in furtherance of this conspiracy and plan, the defendant, R. G. Brewer, Inc., executed and delivered a check, in the sum of Three Thousand Fifteen ($3,015.00) Dollars, payable out of the funds the said defendant, R. G. Brewer, Inc., had on deposit with the defendant, The First National Bank in